

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:4  
PLR-114295-16  
Date:  
October 24, 2016

Re:

### Legend

Settlor =  
Trust =

Date =  
Son =  
Son's Brother =  
A =  
B =  
C =  
Court =

Statute 1 =  
Statute 2 =

Dear :

This letter responds to your authorized representative's letter dated April 4, 2016, in which you request a ruling concerning the generation-skipping transfer (GST) tax consequences of a proposed division and modification of Trust.

The facts and representations are as follows:

On Date, a date prior to September 25, 1985, Settlor established Trust, an irrevocable trust, for the benefit of his son, Son, and Son's family.

Pursuant to Article FIRST, paragraph B.1.a. of Trust, beginning ten (10) years after the execution of Trust and continuing until the termination of Trust, as long as any of Son and his issue is living, the trustees are directed to distribute the net income of Trust, in quarterly or other convenient installments, to one or more of Son, Son's spouse, Son's issue, the issue of any spouse of Son (whether or not Son is then married to her or was married to her at the time of his death), and the spouses of Son's issue (collectively, the Beneficiaries), together with the trusts created under Article SECOND of Trust (the Income Accumulation Trusts) in amounts or proportions as the independent trustees may think appropriate. Under Article FIRST, paragraph B.1.b., the trustees are also directed to distribute as much of the principal of Trust as the independent trustees determine to be desirable for the support, education or emergency needs of the Beneficiaries.

Under Article FIRST, paragraph B.2.a., if at any time prior to the termination of Trust neither Son nor any of Son's issue is living, and any of the group composed of Son's spouse, the issue of any spouse of Son (whether or not Son was married to her at the time of his death), and the spouses of Son's issue is living, the trustees will distribute as much of the net income of Trust as the independent trustees determine to be desirable to one or more members of that group in amounts or proportions as the independent trustees may think appropriate. Under Article FIRST, paragraph B.2.b., the trustees will distribute the remaining net income, in quarterly or other convenient installments, to one or more of Settlor's issue (excluding Son's Brother, but not his issue) and the spouses of Settlor's issue, including the spouse of Son's Brother but only if Son's Brother is not living, in amounts or proportions as the independent trustees may think appropriate. Under Article FIRST, paragraph B.2.c., the trustees will also distribute as much of the principal of Trust as the independent trustees determine to be desirable for the support, education or emergency needs of the persons entitled to receive distributions under Article FIRST, paragraphs B.2.a. and B.2.b.

Under Article FIRST, paragraph C., Trust will terminate twenty-one (21) years after the death of the survivor of Settlor, Settlor's spouse, and Settlor's issue who were living on Date, or at such earlier time as the independent trustees deem appropriate. Under Article FIRST, paragraph C.1., upon termination, the trustees will pay the then-remaining principal of Trust to one or more of the Beneficiaries in amounts or proportions as the independent trustees may think appropriate. If the independent trustees do not specify the recipients, then under Article FIRST, paragraph C.2., the remaining principal of Trust will be paid to Son or, if Son is not then living, then under Article FIRST, paragraph C.3. in equal shares to Son's children and the children of any spouse of Son (whether or not Son was married to her at the time of his death) that are living when Trust terminates; provided that if any child of Son or of Son's spouse is not living, but has issue living, that issue will take, per stirpes, the share the deceased child

would have received if living; or if no children or issue of deceased children are living, then under Article FIRST, paragraph C.4. to Settlor's then-living issue (excluding Son's Brother, but not his issue), per stirpes; or if none, then under Article FIRST, paragraph C.5. to a charity.

Under Article EIGHTH, paragraph C., for purposes of Article FIRST, paragraphs C.3. and C.4., the surviving spouse of any of Settlor's issue is considered as a child (and hence as issue) of that person; provided that the spouse shall not be entitled to more than one-third of the share of principal which that person would have received if living and, if that person has no other issue, the excess will pass to the person or persons who would take his or her share of principal in default of issue.

Under Article SECOND, if any of the Beneficiaries is living 10 years after Date, the trustees may establish a separate Income Accumulation Trust for each of the Beneficiaries. The principal of each Income Accumulation Trust will consist of all income transferred to it in accordance with Article FIRST, paragraph B.1.a.

Son has only one spouse and Son and his spouse have three children: one son, A, and two daughters, B and C. Neither Son nor his spouse has any other child or issue of a deceased child. The trustees of Trust have funded two Income Accumulation Trusts, one for Son and one for Son's spouse. The trustees of Trust have filed a petition in Court for authorization to divide Trust into three separate trusts (the Divided Trusts), one for the benefit of the family line of each of A, B and C. Each Divided Trust will be funded with one-third of the assets of Trust, on a pro rata basis. The existing Income Accumulation Trusts will be administered separately from the Divided Trusts, and no assets of the Income Accumulation Trusts will be used to fund the Divided Trusts.

The terms of the Divided Trusts will be the same as the terms of the Trust, in that:

i. One trust will be for the benefit of Son and Son's spouse; A, and A's issue; A's spouse and the spouses of A's issue; the issue of A's spouse (other than A's spouse's issue), whether or not he is then married to her or was married to her at the time of his death, together with the trusts created under Article SECOND of Trust (the Income Accumulation Trusts);

ii. One trust will be for the benefit of Son and Son's spouse; B, and B's issue; B's spouse and the spouses of B's issue; the issue of B's spouse (other than B's spouse's issue), whether or not she is then married to him or was married to him at the time of her death, together with the trusts created under Article SECOND of Trust (the Income Accumulation Trusts); and

iii. One trust will be for the benefit of Son and Son's spouse; C, and C's issue; C's spouse and the spouses of C's issue; the issue of C's spouse (other than C's spouse's issue), whether or not she is then married to him or was married to him at the time of her death, together with the trusts created under Article SECOND of Trust (the Income Accumulation Trusts).

State Statute 1 provides, in relevant part, that the Court, for cause shown, may authorize the division of a trust into two separate trusts upon such terms and conditions and with such notice as the Court shall direct.

State Statute 2 provides, in relevant part, that a noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the Court concludes that the modification is not inconsistent with the material purpose of the trust. If not all the beneficiaries consent to a proposed modification of the trust under State Statute 2, the modification may be approved by the Court only if the court is satisfied that: (1) if all the beneficiaries had consented, the trust could have been modified under State Statute 2; and (2) the interests of a beneficiary who does not consent will be adequately protected.

It is represented that Trust has been irrevocable at all times since Date and that no actual or constructive additions have been made to Trust after September 25, 1985.

#### Ruling Requested:

You have requested a ruling that the proposed division and modification of Trust will not cause Trust or the Divided Trusts to lose their GST tax-exempt status and will not cause any distribution from or termination of any interests in Trust or the Divided Trusts to be subject to GST tax under § 2601.

#### Law and Analysis:

Section 2601 of the Code (Code) imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433 of the Tax Reform Act of 1986 (the Act), GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, except to the extent the transfer is made out of corpus added to the trust by an actual or constructive addition after September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601(b)-1(b) will not cause the trust to lose its exempt status. These rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. These rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the GST tax, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(2) provides that, for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, considers a situation in which, in 1980, Grantor established an irrevocable trust for the benefit of his two children, A and B, and their issue. Under the terms of the trust, the trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust for A and A's issue provides that the trustee has the discretion to distribute trust income and principal to A and A's issue in such amounts as the trustee deems appropriate. On A's death, the

trust principal is to be distributed equally to A's issue, per stirpes. If A dies with no living descendants, the principal will be added to the trust for B and B's issue. The trust for B and B's issue is identical (except for the beneficiaries), and terminates at B's death at which time the trust principal is to be distributed equally to B's issue, per stirpes. If B dies with no living descendants, principal will be added to the trust for A and A's issue. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust was irrevocable on September 25, 1985. It is represented that no trust additions have been made after September 25, 1985.

The proposed division of Trust into the three separate Divided Trusts is substantially similar to the situation described in Example 5 of § 26.2601-1(b)(4)(i)(E). Under the proposed division and modification, the three separate Divided Trusts will be administered under the original terms of Trust.

Based on the facts submitted and the representations made, and provided Court issues an order effective under State Statutes 1 and 2 and includes the modification as described above, we conclude that the proposed division and modification of Trust will not shift a beneficial interest in Trust to any beneficiary who occupies a lower generation than the persons holding the beneficial interests prior to the division and modification. In addition, the proposed division and modification will not extend the time for vesting of any beneficial interest in the Divided Trusts beyond the period provided in the original terms of Trust. Accordingly, the proposed division and modification will not cause Trust or the Divided Trusts to lose their exempt status and will not cause any distribution from or termination of any interests in Trust or the Divided Trusts to be subject to GST tax under § 2601.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.



In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to our authorized representative.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow

Senior Technician Reviewer, Branch 4  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy of this letter for § 6110 purposes